

REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks is respectfully requested.

As correctly stated in the Final Office Action mailed from the U.S. Patent and Trademark Office on April 18, 2006, Claims 1-13 are under consideration in the instant application. Claims 1-13 stand rejected. By the present amendment, Claims 1, 5, 9 and 10 are amended. Claims 1 and 5 have been amended to particularly point out and distinctly claim that which the Applicants regard as the invention. Claims 9-10 have been amended to remove the language 'selected from the group' which has been rendered vague by way of a previous amendment. No prohibited new matter has been introduced by way of the above amendments.

Please cancel Claims 11-28 without prejudice. Applicants reserve the right to file a continuation or divisional application on any subject matter cancelled by way of the present Amendment. Applicants respectfully request consideration of the subject application as amended herein.

35 U.S.C. §112, First Paragraph Rejections

The Examiner has rejected Claims 1-13 under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants note that Claims 11-13 have been cancelled by way of the present amendment, thus rendering any rejection of those claims moot.

Despite Applicant's previous assertions that the Specification, at page 33-34, lines 25-9, states that Table 2 provides a list of open reading frames, a region of nucleic acids which encodes polypeptides, which was determined from stop to stop codons and that additionally page 34, lines 11-13, teaches that "It will be recognized by one skilled in the art that the natural translation initiation sites will correspond to ATG, GTG or TTG," the Examiner continues to allege that, "SEQ ID NO: 20623 lacks a start codon for translation". The Examiner further alleges that without providing a description of both a start and a stop codon, Applicants have only provided support for the specifically identified fragment consisting of SEQ ID NO: 20623.

The Examiner has also rejected Claims 1-13 under 35 U.S.C. §112, first paragraph, alleging that the disclosure fails to provide a representative number of species to describe the genus and that accordingly Applicants were not in possession of the claimed genus. Despite Applicant's previous assertions that one of ordinary skill in the art would conclude that the disclosure provides a representative number of species to describe the genus, the Examiner has maintained the rejection under 35 U.S.C. §112, first paragraph. As stated on page 1102 of the Federal Register, Vol. 66, No. 4, disclosure of a single species can provide

an adequate written description of a generic claim, if one skilled in the art would recognize that the disclosure of the species includes the genus:

The Guidelines now indicate that a single species may, in some instances, provide an adequate written description of a generic claim when the description of the species would evidence to one of ordinary skill in the art that the invention includes the genus.

In order to expedite prosecution, and not to concede to the Examiner's rejection, Applicants have amended Claims 1 and 5 to recite "consisting of" the previously elected SEQ ID NO, thus obviating the rejection of Claims 1-10. Accordingly, Applicants respectfully request withdrawal of the written description rejection of Claims 1-10 under 35 U.S.C. § 112, first paragraph.

CONCLUSION

In view of the amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone call would expedite the prosecution of this case, the Examiner is invited to call the undersigned at (781) 398-2548.

Respectfully submitted,

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